

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TONY DALE PENWELL,)	
)	
Plaintiff,)	Case No. 05-0831-JLR-JPD
)	
v.)	
)	ORDER GRANTING DEFENDANTS'
ROBIN CLEARY, et al.,)	MOTION FOR STAY
)	
Defendants.)	
_____)	

Plaintiff is an inmate at the King County Regional Justice Center in Kent, Washington ("RJC") who was charged by the King County Prosecutor on November 8, 2004, with Assault, Rape, Unlawful Imprisonment, and Felony Harassment, all in the first degree. Dkt. No. 20 at Attach. A. On July 7, 2005, he was charged with two additional counts of first degree Child Molestation. *Id.* at Attach. B. Plaintiff is scheduled to stand trial on these charges in King County Superior Court on November 28, 2005. *Id.* at Attach. C.

On May 4, 2005, plaintiff filed this pro se and in forma pauperis 42 U.S.C. § 1983 civil rights suit against four police officers involved in his state court investigation and

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01 arrest.¹ Dkt. Nos. 1, 6, 10, 14. Among other things, plaintiff alleges that defendants violated
02 his civil rights by conducting an illegal search, illegally seizing several items of his personal
03 property, and failing to properly catalogue those items. Dkt. No. 14. He also argues that,
04 after seizing his clothing, defendants provided him with a paper gown that exposed his
05 genitals. *Id.* Plaintiff also alleges that defendants illegally interrogated his minor children.
06 *Id.* Plaintiff seeks \$250,000 for these alleged violations. *Id.*

08 On November 9, 2005, defendants filed a motion to stay this suit pending the
09 outcome of plaintiff's criminal trial in state court. Dkt. No. 20. Relying upon the doctrine of
10 *Younger v. Harris*, 401 U.S. 37 (1971), they argue that the Court should refrain from
11 exercising jurisdiction until the conclusion of plaintiff's criminal trial. *Id.* Plaintiff has not
12 responded to the motion.

14 "Based on the notion of comity, *Younger* and its progeny 'espouse a strong federal
15 policy against federal-court interference with pending state judicial proceedings absent
16 extraordinary circumstances.'" *Woodfeathers, Inc. v. Washington County, Or.*, 180 F.3d
17 1017, 1020 (9th Cir. 1999) (quoting *Middlesex County Ethics Committee v. Garden State Bar*
18 *Ass'n*, 457 U.S. 423, 431 (1982)). Under *Younger*, federal courts must abstain from
19 exercising jurisdiction when (1) there are ongoing state court proceedings, (2) that implicate
20 important state interests, and (3) that afford plaintiff an adequate opportunity to raise his
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23 ¹Plaintiff's complaint was originally filed on May 4, 2005. Dkt. No. 1. However, because
24 of a deficiency in his application to proceed in forma pauperis, the complaint was not lodged until
25 July 5, 2005. Dkt. Nos. 1-6. Plaintiff did not provide the Court with a complaint adequate to
26 order service until August 23, 2005. Dkt. Nos. 10-11. His second amended complaint, which
names the current defendants, was filed on September 19, 2005. Dkt. No. 14.

01 federal claims. *Id.*; see also *M&A Gabae v. Community Redevelopment Agency*, 419 F.3d
02 1036, 1039 (9th Cir. 2005) (internal citations omitted). Although the doctrine traditionally
03 applies to actions seeking injunctive or declaratory relief, it also applies to § 1983 actions for
04 damages. *Gilbertson v. Albright*, 381 F.3d 965, 968-69 (9th Cir. 2004) (en banc).

05 This case presents all three elements necessary for the Court to abstain from
06 exercising its jurisdiction. First, there is an ongoing criminal prosecution proceeding against
07 plaintiff in King County Superior Court. Initial charges were filed against plaintiff prior to
08 the filing of this action and trial is currently scheduled for November 28, 2005. *M&A*
09 *Gabae*, 419 F.3d at 1040; see also *Kitchens v. Bowen*, 825 F.2d 1337, 1341 (9th Cir. 1987)
10 (indicating that state court proceedings begin when they are filed) (internal citations omitted).
11 Secondly, Washington undoubtedly has an important interest in prosecuting felony crimes.
12 See *Gilbertson*, 381 F.3d at 970 (noting that “*Younger* itself involved a state criminal
13 prosecution”). Finally, plaintiff’s criminal trial will provide him an adequate opportunity to
14 raise his federal claims.² See *Dubinka v. Judges of the Superior Court*, 23 F.3d 218, 224 (9th
15 Cir. 1994) (indicating that state court litigants typically are deemed to have had an
16 opportunity to raise their federal claims unless they were procedurally barred from doing so).
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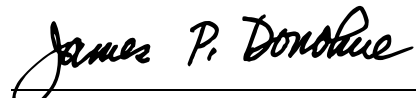
18 In § 1983 actions in which plaintiffs seek only damages, permanent abstention in the
19 form of a dismissal is not appropriate. *Gilbertson*, 381 F.3d at 968. Instead, the Court should
20 stay the federal suit pending the outcome of the state court case. *Id.* at 968-69. Since state
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23 ²The gravamen of plaintiff’s § 1983 suit turns on his allegation that defendants violated
24 his rights by conducting an illegal search and seizure and by illegally interrogating his minor
25 children. Dkt. No. 14. These issues are directly connected to his criminal prosecution and are
26 likely to be raised there. He will be able to bring these claims in federal court once the stay is
lifted in this matter.

01 court proceedings remain ongoing until state appellate review is complete, the stay should
02 remain in effect through such time. *Id.* at 969 n.4 (citing *Ohio Civil Rights Comm'n. v.*
03 *Dayton Christian Schools, Inc.*, 477 U.S. 619, 629 (1986)). The Court therefore ORDERS
04 that this case be STAYED pending the conclusion of plaintiff's state court criminal trial and
05 any subsequent appeal(s). The Court FURTHER ORDERS defendants to inform the Court
06 within thirty (30) days of the conclusion of the state court proceedings, so that the stay may
07 be timely lifted.
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09 The Clerk is directed to send copies of this Order to plaintiff and to the Honorable
10 James L. Robart.

11 DATED this 29th day of November, 2005.

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14 JAMES P. DONOHUE
15 United States Magistrate Judge
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